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# The Impact of Irregular Status on Human Development Outcomes for Migrants

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# Abstract

The purpose of this paper is to explore how irregular status impacts a range of human development outcomes for labour migrants. The analysis indicates that for poorer labour migrants, irregular (or undocumented) migration provides a positive, private return to income and livelihood improvements for themselves and their families as compared to 1) no movement at all, and at times, 2) regular (or documented) migration. However, irregular status is associated with a range of forms of disadvantage and vulnerabilities that often compromise migrants' rights, entitlements and the rate of return they achieve from the migration process. Migrants are as rational as other members of the population and, being aware of these vulnerabilities, many still choose to migrate. The larger hypothesis of this paper is that, as long as poverty drives migration, legal status will not be a priority for migrants. Migrants will be willing to endure short to medium term hardship and the undermining of a range of capabilities and rights (such as education, social assets, rights and personal welfare) to provide economic safety nets for their families and future improvements to their (and their families) livelihoods and wellbeing. As long as migrants on average achieve a positive increase in income and assets through the migration experience (which they do) they will sacrifice a whole range of freedoms and rights. It is therefore imperative that policy makers make active steps to protect migrants with regard to basic human rights and facilitate positive outcomes from their migration experiences. In particular, we urge southern governments to advocate for all their migrants abroad, regardless of legal status. If southern country governments accept the mainstream opinion that migration is good for development, and furthermore recognise that a substantial number, if not the majority, of their migrants are irregular, and continue sending remittances and investment, then governments should seek to protect their citizens abroad, facilitate safe remittances, and begin to stand firm in the face of pressure to control national borders.

Keywords: Irregular status, migration, vulnerability, poverty, protection.

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## 1. Introduction

The potential for positive linkages between migration and development has been increasingly recognised in recent years, with a spate of books, articles and international conferences focused on this theme. In fact, there is a growing body of opinion that migration is good for development. This theme has been taken forward in a ‘High Level Dialogue on Migration and Development’ as part of the meeting of the UN General Assembly in 2006, as well as estimates from the World Bank that an increase in temporary international mobility of the order of 3 per cent of developed countries’ workforces could generate up to \$356 bn in benefits annually, fairly evenly distributed between rich and poor countries (World Bank 2006).

Yet in terms of international migration at least, the policy context for poor people to use migration as a route out of poverty often remains limited. In particular, although there has been an expansion of international migration into northern economies over the past decade, especially to the United States and European countries with relatively high economic growth rates, these countries have generally retained and sometimes strengthened relatively restrictive immigration rules. As a result, legal migration routes have been opened primarily only to more educated individuals and to special categories of migrants such as refugees (although recently there have been some significant changes). In turn, a significant proportion of migrants have been pushed towards more ‘irregular’ modes of entry into the North – as well as to some southern countries, with the result that they enter sectors of the labour market where jobs are less secure, wages and working conditions are generally poorer, and where there may be a constant threat of discovery and deportation.<sup>1</sup>

The purpose of this paper is to explore how irregular status impacts a range of human development outcomes for labour migrants.<sup>2</sup> First, using primary data and secondary evidence we support the increasingly held view that it is inappropriate to use simple dichotomies when

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<sup>1</sup> Throughout this paper we use the terms irregular and undocumented interchangeably. However, strictly speaking, as will be discussed in section 2, undocumented is a special case of irregular.

<sup>2</sup> This paper focuses explicitly on voluntary labour migrant. Whilst recognising the ‘mixed-migration’ problematic, as comprehensively reviewed by van Hear et al. (2009), in this paper we allow ‘voluntary labour migration’ to include all migrants who migrate from purposes of securing job opportunities and higher income. It is voluntary in the sense that the migrants have not moved in response to physical insecurity arising from conflict or violent threat. We fully appreciate that many poor labour migrants are compelled to move out of necessity, in fact our main hypothesis is built on this assumption. However, due to the mainstream understandings of ‘forced migration’ we choose not to use this term.

describing migrant status for instance between irregular and regular migrants (also referred to as legal/illegal; authorised/unauthorised; documented/undocumented). Instead we point out the many shades of grey that exist according to a range of legal statuses. We then move on to propose that, for the majority of labour migrants across the globe, poverty, the need to manage risk and the motivation to improve livelihoods and capabilities, is the main migration driver. We argue that poorer migrants are more likely to engage in irregular migration (with the incorrect documentation or no documentation) than non-poor migrants due to reasons of necessity, structural constraints that restricted access to legal routes of migration, and informational barriers.

We then move to discuss the incentives for (non)compliance from a migrant perspective. Evidence is drawn on to argue that, as far as direct economic benefits from migration are concerned (such as, fulfilment of basic needs, increases in wealth and assets), legal status is not causally related to a positive outcome. Sometimes regular status may actually work against a positive outcome. However, we go on to focus on exploring the costs of being irregular in terms of social, political and distributional indicators. Irregular status exacerbates migrant disadvantage and vulnerability on a number of counts. As the poor are more likely to engage in irregular migration, they face the double disadvantage of poverty-specific vulnerabilities as well as irregular-migration vulnerabilities. Poorer migrants need to weigh up whether the poverty alleviating and asset enhancing benefits from irregular migration compensate for a plethora of possible disadvantages, such as: exploitation; deskilling; extortion; exclusion; insecurity; discrimination; lack of rights; and lack of safety at work. We trace the impacts of irregular status on a range of human development outcomes using secondary sources and primary survey sources. In conclusion, we draw out implications of the work with a view to maximising the benefits and minimising the risks of migration for irregular migrants.

### ***Methodology and Datasets***

The data used for primary analysis in this report comes from a number of quantitative specialised migrant surveys and qualitative surveys conducted as part of the research project on Social Protection: Portability, Access and Regimes of Reciprocity. The datasets are as follows:

1. a survey of 201 Malawian return migrants from the UK
2. a survey of 150 Malawian return migrants from South Africa
3. a survey of 207 Ghanaians in Nigeria
4. a survey of 107 Ghanaians in the UK
5. a qualitative survey of 17 current Malawian migrants residing in Johannesburg
6. qualitative interviews with Ghanaians in the UK, Malawians in the UK and Ghanaian returnees from Nigeria.

The surveys were conducted at various times between January 2007 and January 2008. They collected information on a range of themes, including: decision to migrate; employment trajectories during migration; legal status and change in status; access to formal and informal social protection; poverty indicators; assets, remittances and associational membership. For the purposes of this paper we draw selectively on data that provides insights into dimensions of legal status, migrant characteristics and migration outcomes.

## **2. Characteristics of irregular migrants**

### ***Numbers***

Accurate estimates of the flows and stocks of international migrants are extremely difficult to obtain, especially in light of the following: 1) the majority of migration is short-term, circular and/or seasonal (ie, under 12 months), whereas official estimates only include people living abroad for over 12 months; 2) many countries do not have robust or reliable databases containing migrant numbers; and 3) these numbers do not include flow estimates. It is likely, then, that the number of international migrants is significantly, if not vastly, higher than this estimate.

If it is hard to obtain an accurate picture of regular migration stocks, how much more unreliable are the attempts to estimate irregular migrant stocks and flows? Exact numbers of irregular migrants are difficult to estimate for a number of reasons discussed below, but it is clear that irregular migration occurs on a large scale — and is a global phenomenon. The Pew Hispanic Center estimates that there are 11.5 to 12 million ‘unauthorised’ migrants in the US (Passel 2006) and, despite the attempts of European countries to limit immigration of ‘unskilled’ workers, there are an estimated 5 to 6.5 million ‘undocumented’ migrants in the EU (Euskirchen



*et al.* 2007) — although the latter figure does include all irregular migrants. Estimates from the UK stand anywhere between half a million and one million irregular migrants. Irregular migrants are also common in migration contexts within the Global South. For example, there are large flows of irregular migrants to South Africa from other countries in the Southern African Development Community (Oliver 2008). Finger-in-the-wind estimates suggest that irregular migrants comprise between 5-10 per cent of total migrant stock.

With respect to other OECD destinations estimates exist on the share of irregular migration. UNESA (2005) estimates the Russian migrants stock at 12 million, the irregular migrants comprising approximately 29 per cent. In 2008, the irregular stock stood at 3.5 million (Alexeev 2008). Thailand estimates for irregular stand at around 55 per cent. Estimates from 2005 put South Africa's irregular stock at 45% and in Kazakhstan estimates reach as high as 98% (UNESA 2005).

Clearly, the above estimates must be considered with much caution, if considered at all. More so than regular migrant stock estimates, irregular estimates suffer from a range of methodological problems. For example, irregular migrants are not always recorded in macro-data instruments. Estimates of undocumented migrants are often calculated using the 'residual method', which involves subtracting the number of migrants in census data from the total number of known legal migrants in the country. This technique is often imprecise, and in any case provides only a partial window into the volume of irregular migration. Another popular way of measuring numbers of irregular migrants is to look at apprehension rates of migrants at border points, under the assumption that most migrants are apprehended. This method is unreliable as it is impossible to tell the number of migrants apprehended as a proportion of the total number of migrants crossing the border. Furthermore, evidence from the Mexican Migration Project (MMP) shows that migrants who have been apprehended are more likely to attempt to re-migrate. With successive attempts and with the aid of migration information networks, migrants become more skilled at crossing the border without being apprehended (Donato *et al.* 1992).

A further significant barrier to conducting research on irregular migrants is the fact that it is often difficult for researchers to gain access to them. Irregular migrants may be unwilling to come

forward for interview for fear of being reported to immigration-related authorities. Moreover, those who do come forward may be a specific higher risk group, thus causing selection problems for any survey design or analysis. If they do come forward they may chose to conceal information concerning legal status, networks and employment, thus introducing bias into the survey method. Ethnographic methods are one way to attempt to overcome these problems; however this introduces large costs in terms of length of time in the field and a limited number of respondents. Another, more appealing way to obtain 'true' information on migrants' experience is to interview returnees within their own countries. The sample may still be subject to the problem of selection bias but problems of concealed information and misinformation are likely to be minimised.

### ***Status Blur***

Many studies of migrants acknowledge the importance of migrants' legal status in a country as a possible determinant of employment decisions, sectors of employment, housing decisions and social protection decisions (among other things). However, due to data constraints the majority of studies are unable to interrogate these issues. If surveys do collect information on legality it is typically in the form of a question, for example: 'Are you legally entitled to remain in the country?' or 'Do you have the formal documentation to allow you to legally stay in the country?' While this line of questioning provides some basic information as to whether a migrant is legally residing within a country, it sheds little light on other factors, such as whether their legal status has been changing while at their destination or whether the migrant has strategically chosen to become undocumented. Furthermore, the simplistic method of this kind of enquiry leads to false dichotomous labelling where the tendency is to divide all international migrants into documented/undocumented; legal/illegal; authorised/unauthorised; regular/irregular migrants. These binaries obscure the empirical reality that the legal status of many international migrants shifts during their time in host countries. For example, some migrants may enter countries through legal channels and later become 'undocumented' by overstaying their visas, while others may violate the terms of visitor visas by working without permission. Irregular migration refers to a broader group of migrants than the 'undocumented' category allows for, encompassing any migrant who is in violation of the terms of their admission into their host country. This includes

migrants who enter countries illegally, failed asylum seekers, migrants who overstay their visas, and those who have a legal right to remain but work illegally.

Carefully distinguishing between different categories - undocumented, documented with right to remain and not work, and documented with right to work - allows us to explore in much more detail the way in which migrants interact with local labour markets and the strategies they might use to balance various types of legal status with employment opportunities and employment status. Legality of employment has obvious implications for migrants' access to social provisioning, both through the employer and workplace as well as through claims made on the state.

Table 1 below indicates the change in legal status of Malawian and Ghanaian survey respondents at arrival in the UK and upon departure (source: Sabates-Wheeler 2008). As anticipated, only 2.5 per cent of Malawians and 12.6 per cent of Ghanaians arrived in the UK without any form of documentation - in other words, completely illegally. Whereas, at the point of departure, 27 per cent and 30 per cent were without any form of documentation to support their continued stay in the UK. The majority of migrants claimed to have some form of documentation on arrival and on departure.

The category of 'legal' or 'documented' is not a particularly useful one when interrogating migrant labour patterns and employment rights. Disaggregating 'legal' into its constituent parts, Table 1 shows that only 14 per cent of Malawian migrants and 8.7 per cent of Ghanaian migrants had the 'right to work' upon arrival to the UK. A further 6 and 16 per cent respectively were not working (in keeping with their legal status); however a massive 65 and 55 per cent of migrants in the UK stated that while they had the legal entry requirements they were in fact working illegally.

Over time we see that the number of legal-entry/illegal-workers reduces to approximately 36 per cent and 17 per cent respectively, however this is matched by a huge increase in undocumented migrants. For the Ghanaians we also witness a large increase in the number of migrants who have been able to obtain the right to work legally and full-time. For the Malawians this increase

is much more modest. Over time we see that some migrants are able to obtain the right to work, whereas many others become completely undocumented by staying in the UK beyond the legally allowed time.

*Table 1: Fluidity of legal status between arrival and departure*

	Malawians-UK		Ghanaians-UK	
	Arrival	Departure	Arrival	Departure
Undocumented	2.5	26.8	12.6	29.6
Documented	97.5	73.1	87.4	70.4
A. Entry docs only	70.6	49.2	71.8	18.4
Illegal workers	64.7	36.3	55.3	17.2
Not working	5.9	12.9	16.5	1.2
B. Right to Work F/T	14	16.9	8.7	46.9
C. Other	12.9	6.9	6.9	5.1

Source: Sabates-Wheeler 2008

The blurring of legal status is compounded by the hugely complex and intricate immigration laws and regulation in many countries. For instance in the UK there are over 80 different types of entry and immigration status.

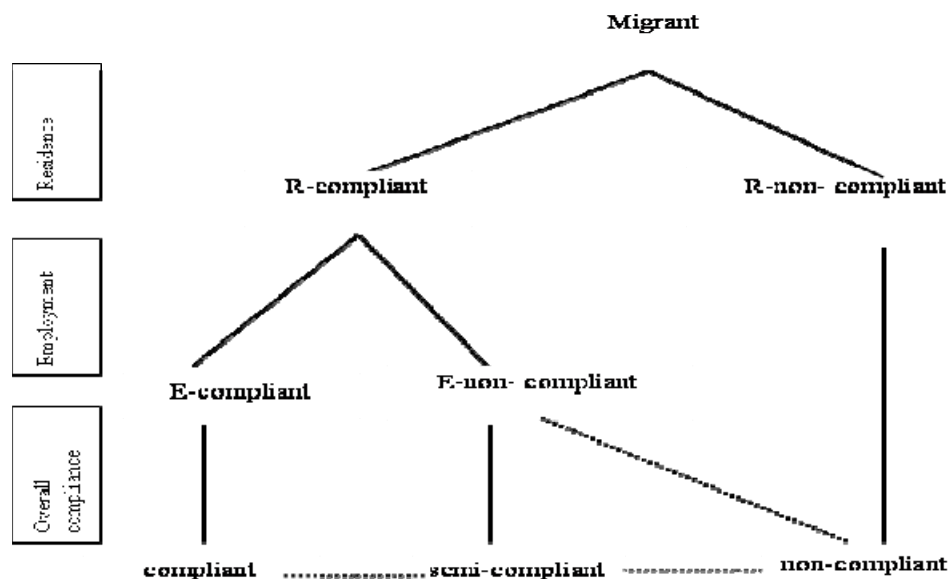
### ***Compliance framework***

Ruhs and Anderson (2006) usefully provide a more nuanced way of categorising different types of legal status. They distinguish between three levels of compliance: **compliant** migrants are legally resident and working in full compliance with the employment restrictions attached to their immigration status; **non-compliant** migrants are those without the right to reside in the host country (i.e. those “illegally resident”); and **semi-compliance** indicates a situation where migrants are legally resident but working in violation of some or all of the employment restrictions attached to their immigration status. (see figure 1 below). A migrant can enter a country as resident compliant or resident non-compliant. If the latter, then the migrant is classified as non-compliant. This corresponds to someone who is completely without documents

of any kind. Alternatively the labour migrant may enter the country as resident-compliant and employment-compliant, thus this person becomes classified as fully compliant.

The more complex and fuzzy category is that of semi-compliance. The category of semi-compliance – the “space between” strict legality and illegality – is extremely broad and captures a wide range of violations of the conditions of employment attached to a migrant’s immigration status, with varying degrees of severity. Consider the case of four student visa holders working 20, 21, 25 and 40 hours per week respectively in the UK. Clearly, there is a substantial difference – in terms of the degree to which the employment restrictions attached to immigration status are violated – between a student who works 21 hours per week and a student who works 40 hours per week. The discussion of where and how the line should be drawn between semi-compliance and non-compliance – or indeed between compliance and semi-compliance – can be highly politicized and the decision might often rest on a personal judgement, with different actors drawing the line in different places. This is an example of how illegality is “socially constructed”.

*Figure 1: Compliance Framework*



Source: Ruhs and Anderson 2006

### **3. Incentives for less than full compliance**

An important contribution of the compliance framework is that it draws attention to the agency of migrants and their ability to strategise in relation to legal status. Often labour migrants choose non-compliance and semi-compliance over compliance. This choice reflects the range of constraints and vulnerabilities at home as well as the options at and of the destination. The decision to migrate irregularly also determines the vulnerabilities and constraints, or opportunities, that will face the migrant in the future.

#### ***Desire to alleviate poverty trumps compliance***

The decision facing the majority of voluntary, relatively poor migrants is whether to stay put at home, where they have full legal status, or whether to move, with the expectation of obtaining a higher income abroad, where they might not enjoy full legal status and the range of capabilities and rights it affords. However, we hypothesise that that this decision is made *independent of legal status*. The main considerations that influence this decision are current and future family welfare as well as the ability to finance the trip. Recognising that expected income is a determinant of migration (as in the Harris-Todaro model and others such as those of Kennan and Walker), we argue that *realised income*, or *poverty* in the current period, is also a significant determinant of migration. In other words, it is not just prior moves that influence subsequent opportunities, but also prior opportunities influence moves which in turn influence future opportunities. Thus we should recognise the importance of initial conditions, specifically poverty, as a determinant to migration.

In keeping with Sabates-Wheeler *et al.* (2008), we forward that as long as people can cover the minimum costs of a move, the ‘poverty threshold’ will determine migration choice. This threshold is likely to be highly context specific; it could be defined in relation to an objective measure such as income or, more likely, a comparative, relative or subjective benchmark. Individuals who are poorer (in a multidimensional sense of the term) are more likely to migrate as long as they see a payoff for doing so. Movement is influenced by their relative position with respect to this threshold. For poorer households the incentive for non-compliance is overwhelmed by a concern to secure welfare (reduce poverty) for the migrant and the family. In other words welfare concerns trump legal status concerns. We would go so far as to argue that

poorer people are much more likely to engage in irregular migration due to: 1) binding poverty constraints at origin and thus the lure of a better livelihood; 2) the high transaction costs of obtaining legality (see below); and 3) structural constraints that restrict access to legal routes of migration. The poorer migrants migrate out of necessity, thus the luxury of legal status considerations are not a priority.

Poorer migrants prioritise family welfare, as indicated from qualitative work with 17 irregular migrants living in two townships of Johannesburg.<sup>3</sup> All respondents cited poverty as a reason for coming to South Africa, often encouraged by either family members or friends at home or in South Africa. The majority of respondents did not want to stay in South Africa. Thus, for them, migration is, in and of itself, a means of social protection for themselves and their families, both in South Africa and in Malawi. All but one of the migrants interviewed had a clear objective to their migration. Many times the objective was to fund a very specific investment, such as ‘to build a roof on my house back in the village’, or ‘to cover the costs of secondary school for one of my daughters’, or ‘to purchase a fishing net’ or ‘to buy a popcorn machine.’ These plans were time bound and most of the migrants had performed calculations about the exact time it would take (given their current salary) to fund the investment and return home.

Frans, a Malawian migrant in Jo’Burg tells of the poverty that caused him to migrate:

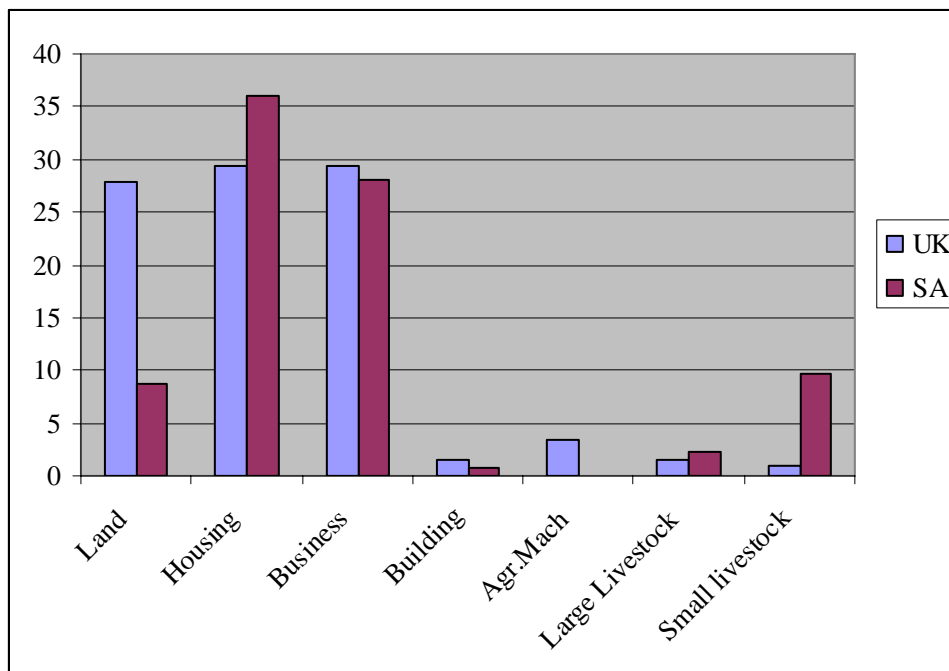
*“I am 40-years-old and first came to South Africa in 1991. My cousin was working and living in Johannesburg. I was doing small-scale farming in Malawi and not making much of a living for the family. The soil was poor and fertiliser expensive, so I was only growing enough for the family to eat – sometimes, we ran out before the next harvest. There was no opportunity to find any work in Malawi. My cousin in Johannesburg said I should come to Johannesburg and look for a job. He helped me find my first contract job here. But it wasn’t enough. So, I looked for work by standing on the street corners and waiting for employers to stop and offer work. I was picked up by a White man with a grass cutting business who needed additional labour.”*

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<sup>3</sup> A qualitative, micro-study was undertaken of a group of 17 Malawians living in Johannesburg, South Africa in 2008, the majority of whom were “undocumented”, “irregular”, or, in terms of official interpretations of the Immigration Act, “illegal”. Four of the respondents were women, and 13 men.

The reason that livelihood concerns so often trump formal legal requirements for deciding migrants is that migration itself represents a critical, possibly the most vital, form of insurance and risk mitigation for the migrant and their family. Approximately 45 per cent of migrants returning from the UK and South Africa accumulated physical assets in their home country as a result of migration. However the nature of investments differ quite highly between migrants. Figure 2 below shows that significantly more UK migrants invested in land back home (27 per cent as compared to 8 per cent), whereas SA migrants invested significantly more in housing and small livestock.

*Figure 2: The impact of migration on physical assets in home country (per centage saying yes)*



Source: Sabates-Wheeler 2008

Similar data from Ghanaians in Nigeria shows that the vast majority of respondents (81.7 per cent) were able to use their migration to build securities for their future. The above data converges to show that the majority of respondents are planning their future social security through private means using capital gained through migration.



### ***Unregulated labour markets translate into higher income for irregular migrants***

Evidence shows that irregular migrants can at times obtain a higher income than their regular counterparts. For example, for Burmese in Thailand, irregular status is the way to ensure the most income. Refugee status leads to no income at all, while registering with sending or receiving governments means a significant portion of wages are lost to taxes and/or extortion. Therefore, although in this case regularised workers remain in the same jobs as irregular ones, it can be demonstrated that their income is negatively affected by legalisation. This is a dynamic particular to labour markets where there is little enforcement of rights or social protection, factors which provide economic incentives for regularisation in areas such as the US and Europe.

The IRC estimates that there are 2 million Burmese in Thailand, most of them undocumented (IRC 2007). The ILO puts the figure at 1.8 million, but does not offer an estimate of the proportion of irregular migrants.<sup>4</sup> Most of these originally migrated to escape persecution at home. However, there is a strong incentive not to register with UNHCR for refugee status. Since refugees are forbidden to work, and live in camps where the prohibition can be exercised, they are only economically viable as undocumented workers. One Burmese interviewee said, 'I didn't know what would be the use of being recognized [as a refugee by UNHCR] anyway.' (Koetsawang 2001: 78).

### ***Prohibitive transactions costs***

To regularise their status with their own government, workers from Burma have to register with the Burmese authorities before leaving the country. This subjects them to a 10 per cent tax on all their income earned abroad. Meanwhile at the Thai end, the official worker registration system, designed to legalise and keep track of undocumented workers, acts in various negative ways on their chances of working their way out of poverty:

- When work permits were introduced in 1996, employers were responsible for registering and acquiring work permits for their irregular workers. However they made foremen and contractors administrative proxies, which resulted in the selling of work permits at inflated prices (up to 4,500 baht instead of the official price of 2,500 baht) (Koetsawang 2001: 80). The average monthly wage in the Thai construction sector in 2006 was 4,706

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<sup>4</sup> <http://www.irinnews.org/report.aspx?ReportID=78173>

baht, and in agriculture was 3,019 baht.<sup>5</sup> The current exchange rate is 34 Baht to 1 US dollar.

- Registration confined the worker to one job in one place, but most migrants are in sectors where they need to remain mobile to work, e.g. construction, agriculture and fishing. The other most common sector for Burmese migrants is domestic work (Koetsawang 2001: 81).
- Registration also involved regular reporting to the authorities by migrant workers. This led to police corruption: they would raid worksites, particularly in construction, looking for those who had missed an appointment and extorting money from them. (Koetsawang 2001: 81)
- Workers could also be jailed for missing appointments, and had to pay (1,000 baht in the case quoted) to get out of jail (Koetsawang 2001: 82).

Overall, both legal migration procedures and regularisation act as a tax on workers, levied through various formal and informal mechanisms of bureaucracy and corruption. The market price of a work permit is approximately 8 per cent of the official annual income of an employee in the construction sector, although evidence shows it is more likely double that of an undocumented Burmese worker (Caouette and Pack 2002). A worker who is subjected to police raids and imprisonment, which evidence shows are more likely to occur where migrant workers are identified through registration procedures, can take another 5-10 per cent (at official minimum wage) out of the yearly salary for each occurrence. Therefore a hypothetical worker who manages to opt out of regularisation or registration of any kind could be expected to keep a minimum of 20 per cent more of their salary than those who regularise.

### ***Inappropriate Social Protection Provisions***

Regular migrants from the South often contribute to social security programmes while working abroad, but many have little to show for these contributions when they move on or return home. This is particularly relevant in the case of public pensions or health insurance, to which some migrants contribute significant sums of money while abroad. Limits to the ‘portability’ (or transferability) of pensions gives some short-term migrants less incentive to work in jobs in the

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<sup>5</sup> [http://www.d-trac.org/en/average\\_thai\\_wages](http://www.d-trac.org/en/average_thai_wages)

formal sector, if this means contributing to social security schemes from which they will not benefit. Moreover, a lack of portability may undermine return or circular migration, as migrants who have spent a considerable amount of time in their host countries are likely to factor in the loss of benefits if they return to their countries of origin. More drastically, many short term migrants will prefer to opt out of the formal, legal system altogether as they wish to avoid tax and social security payments. Furthermore, it is possible that the vulnerabilities that may attract insurance in the Global North, such as pensions and life home insurance, may not be priorities for poorer migrants from some countries in the South, where health insurance may be a priority.

Priorities for the future expressed by Malawian and Ghanaian migrants to the UK are shown in table 2 below. The most significant investments for the future were savings, housing and land, and small business. Very few migrants were contributing to private pensions or health in home country or at destination. This is likely to reflect the preferences of migrants in general, their relative lack of attachment to a host labour market and also their relative poverty status. The tables illustrates that, overall, compliant migrants make more investments for the future, due in large part to their higher levels of initial and current wealth. However, the social protection priorities are similar across all categories of migrants: savings, investment in property and small businesses. The different magnitudes and rankings across the migrant groups (Malawians and Ghanaians) are likely to reflect the changing investment profiles of current versus returnee migrants. That is, returnees are more likely to have investment in small businesses upon return as opposed to current migrants who have yet to repatriate their efforts in full and start businesses.

*Table 2: Investments for the Future of South-South Labour Migrants in home locations, per cent indicating ‘yes’*

	<b>Ghanaians in Nigeria</b>			<b>Malawian returnees from S.A.</b>		
	<i>compliant</i>	<i>Semi-compliant</i>	<i>Non-compliant</i>	<i>compliant</i>	<i>Semi-compliant</i>	<i>Non-compliant</i>
Savings	60	53	48	53	23	22
Pensions and health	14	5	8	0	0	1
Housing	10	2	4	59	34	29

and land						
Small business	20	24	16	47	30	45
Farming	3	2	0	41	9	6

Source: Sabates-Wheeler 2008

### ***Limited private economic benefits to regular status***

#### *Wages*

It is very surprising to note that recent, yet limited, evidence from both the USA and the UK suggest that there are few, if any, private economic benefits to entering a country with regular status. Benefits here are defined in terms of wage differentials or positive changes in income over time. Evidence from the Mexican Migration Project indicates that a lack of documents has no effect on US wages. Factors that do relate to immigrant wages include language, time in the job, skill level and receiving-country social networks (Massey 1987). While Massey and colleagues show that legality has no impact on wages, citizenship does (Massey *et al.* 2005).

More recent work by the main author, using data from Ghanaian and Malawian migrants in the UK and Malawian migrants in South Africa, revealed a number of interesting findings regarding the importance of legal status for the migration prospects of this particular group of migrants. In the case of both UK and South Africa returnees, irregular status did not work against migrants in terms of obtaining positive outcomes — which were defined as income change and occupational mobility — from their migration, nor did it prevent them from obtaining a positive change in their immigration status whilst abroad. Even more striking was the fact that characteristics such as marital status, age, wealth and education had little effect on migrants' success whilst abroad. Indeed, length of stay and social protection, including asset-building and access to informal social networks, were determined to be the most important aspects of migration success for the migrants. It was these factors that largely determined whether temporary labour migration allowed migrants to move out of poverty. Very importantly, the results are nuanced by the destination of the migrant. For migrants in closer locations (South Africa) social networks were of vital importance, whereas for migrants that travelled long distances, length of stay and networks were important (see the box inserted below: Sabates-Wheeler 2008).

While regular migrants have, on average, higher incomes, the ability to obtain a positive improvement in income is not affected by legal status. We find that for the majority of migrants, experience improved income, even those with a negative change in legal status. However, if a migrant retains continual right to work or a positive change in status, (s)he is more likely to have an increase in income. So better legal status helps, but still the majority of migrants have an increased income, even if they are undocumented. So illegality does not work against you, but legality works for you (heightens a positive effect).

#### **Destination Matters: duration and social networks**

The table below provides the results of a probit regression estimation. The dependent variable takes the value of 1 for a positive change in income due to the migration experience, and 0 otherwise. This variable is not constructed from income, but from asking the respondent to evaluate their change in income due to the migration experience. We include a number of variables to measure these characteristics, such as age, education, prior income, prior occupation, however these are not presented here. Columns 1 and 3 show point estimates of a regression that includes an informal social protection index and length of stay as separate variables. As expected, we see that length of stay is crucially important for UK-migrants in achieving a positive change in income. For the average migrant, informal networks (SPIndex) are not significant. This result resonates with qualitative fieldwork carried out within the UK. Malawians within the UK are a very disparate group with thin associational life. The few interviews we were able to conduct indicated that UK Malawian migrants were highly suspicious of us and of each other. Even family members, who have overstayed, are unlikely to contact each other while in the UK. However for SA migrants, informal social protection turns out to be highly significant while length of stay is not significant.

Columns 2 and 4 include an interaction term between time and informal social protection. The results for UK-migrants show that length of stay\*SPindex is significant at the 10 per cent level. Length of stay as measured by 'Time 2' is no longer significant. This suggests that it is the interaction of time and informal social protection that allows migrants to achieve a positive result. In other words, long-stay migrants with relatively more networks achieve a better result than short-stay migrants with thin networks, controlling for time and social networks (if we specify the time dummy as one year or more then the result becomes significant at the 5 per cent level). We also ran a specification that included initial legal status as an independent variable. We found this variable to be insignificant in explaining increased income due to migration. The story is different for SA-migrants: the interaction term is not significant and the informal social protection index remains highly significant.

*Table x: Probit regression estimates for determinants of a positive change in income due to migration*

<b>Dependent: change in income</b>	<b>UK-migrants</b>		<b>SA-migrants</b>	
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
	<b>Beta</b>	<b>Beta</b>	<b>Beta</b>	<b>Beta</b>
<b>Informal SP Index</b>	<b>0.038</b> <b>(0.088)</b>	<b>-0.108</b> <b>(0.135)</b>	<b>0.256**</b> <b>(0.106)</b>	<b>0.378**</b> <b>(0.156)</b>
<b>Length of migration (years)</b>	<b>0.192**</b> <b>(0.061)</b>		<b>0.078</b> <b>(0.515)</b>	
<b>Time dummy 2: (base:&lt;=2) &gt; 2 years</b>		<b>-0.139</b> <b>(0.510)</b>		<b>0.670</b> <b>(0.595)</b>
<b>SPindex * time 2</b>		<b>0.297*</b> <b>(0.170)</b>		<b>-0.194</b> <b>(0.220)</b>
<b>Observations</b>	<b>192</b>	<b>192</b>	<b>141</b>	<b>141</b>
<b>Log likelihood</b>	<b>-117.66</b>	<b>-116.05</b>	<b>-90.93</b>	<b>-91.53</b>

Source: Sabates-Wheeler (2008)

### *Contracts and Employment-Related Social Protection*

The research foregrounds the fact that international migrants often have a plethora of alternative strategies to access international labour markets and to achieve positive outcomes from their overseas migration. For example, many migrants without the right to work had secured formal work contracts that were taxed (perhaps in the form of a hidden extortion). Similarly, ‘legal’ migrant workers took on jobs in the informal sector of host countries (see table 3 below). Table 3 below shows a substantial increase in formal legal contracts for migrants with the right to work between first and last jobs (from 50 to 80 per cent). Interestingly, informal verbal contracts decrease massively for undocumented migrants between first and last jobs, matched by a substantial increase in formal legal contracts for undocumented migrants!! We also see that 66 per cent of migrants on entry visas but with work restrictions claim to have formal legal contracts in their last/current jobs!!

*Table 3: Type of contract in first and last/current jobs in the UK by legal status*

	Non-compliant		Semi-compliant		Compliant	
	1 <sup>st</sup>	Last	1 <sup>st</sup>	Last	1 <sup>st</sup>	Last
<b>Formal legal</b>	23.8	41.2	40.2	66.4	50	80
<b>Informal written</b>	23.8	27.4	27.5	13.6	35	15
<b>Informal verbal</b>	52.4	19.6	27.9	15	12.5	0
<b>Other</b>	0	11.7	4.2	5	2.5	5
<b>Total (no)</b>	21	102	236	140	40	80

Source: Sabates-Wheeler 2008

*the sample includes 157 Ghanaians who are currently, or returned from the UK and 201 Malawians returnees from the UK*

Many legal migrants saw little point in contributing to formal social security benefits, and this made working in the informal sector an attractive option for some migrants. Migrants’ access to formal state services in their host countries varied.

According to work status (defined by legal documents) only 12 per cent of migrants were entitled to employment-related benefits in their first jobs and 25 per cent in last/current jobs. The

table below shows that from those 12 per cent only 71.8 per cent claimed to be entitled to benefits in their first job. This increased to 81.1 per cent in last/current jobs. The majority of other migrants are not entitled to benefits in their first jobs, however, in the ‘entry but illegal worker’ category 48 per cent believe they are entitled to benefits in their first job. This rises to 64.6 per cent in last/current job. The increase in entitlement-belief is even more dramatic for the undocumented category. Both of these latter categories are not entitled to any state-funded benefits, therefore the conclusions that can be drawn here are that 1) migrants are ignorant of their inability to access benefits, or/and 2) migrants are entitled to other employment related benefits that are not state-funded.

*Table 4: Entitled to benefits in first and last/current jobs?*

	<b>YES</b>	
	<b>First job</b>	<b>Last job</b>
<b>Non-compliant</b>	28.6	55
<b>Semi-compliant</b>	48.8	64.6
<b>Compliant</b>	71.8	81.1

Source: Sabates-Wheeler 2008

### *Occupational mobility*

Using data on Ghanaians and Malawians to the UK we find that migrants who were employed in ‘higher’ occupations prior to migration take a relatively bigger hit to occupational status on arrival to the UK. Over 70 per cent of illegal and legal workers are downwardly mobile between last job at origin and first job at destination. Looking at legal status at point of departure and occupational mobility between first and last job, non-compliant and semi-compliant workers in the UK are more likely to be downwardly mobile than those with the right to work (17 per cent as opposed to 10 per cent for other groups) and those with the right to work are more likely than other groups to be upwardly mobile (35 per cent and 27 per cent). However, across all groups most migrants remain in the same occupations (61 per cent) during the migration experience.

#### 4. Relational and Distributional Disadvantage as a Result of Irregular Status

The above section outlines the limited (sometimes negative) impact that regular status has on outcomes, specifically quantifiable economic outcomes such as income, occupational mobility, and labour force engagement. That is, in regard to income and income improvement irregular status does not appear to have significantly negative outcomes. In this section we look at other aspects of human development, such as social welfare, security, dignity, associational participation and inclusion, asking what are the impacts of irregular status on these outcomes? Disadvantages or vulnerabilities specific to irregular status define and shape the parameters of outcomes for migrants.<sup>6</sup> Disadvantage can take three forms: individual, distributional, and relational. Individual forms of disadvantage may arise due to specific characteristics of the individual, related to differences in innate ability, but also to some types of disability. We do not deal with this type of disadvantage here. A relational form of disadvantage can be embedded in socio-cultural relationships that reflect differences in the norms, values and customs which constitute local constructions of ‘the migrant’, or other groups. These constructions are often interwoven with culturally-held notions of legality, race or gender, which can constrain the nature of a group’s participation in labour markets. That is, social constraints may militate against their taking up of certain occupations. These socio-cultural constraints can lead individuals and groups to be relatively excluded from access to public goods, such as health and education, and from civic engagement.

*Table 5: Forms of Disadvantage and Structures of Opportunities for Irregular Migrants*

STRUCTURES OF OPPORTUNITIES	FORMS OF DISADVANTAGE		
	Relational		Distributional
	<i>Socio-cultural</i>	<i>Socio-political</i>	<i>Locational</i>

<sup>6</sup> Much of this conceptual framework draws on R. Sabates-Wheeler and M. Waite, 2003: ‘Migration and Social Protection: A Concept Paper’ DRC Migration Working Paper T2, Brighton: University of Sussex



Access and distribution	Social exclusion based on ethnicity or irregular status; isolation;	lack of access based on discrimination; exploitation; unequal distribution of resources; lack of 'legal' status leads to economic exploitation	Eg. irregular migrants in transit are unable to access services due to 'remoteness' Remote, rural dwellers –lack access to health and education <i>Ghettoisation</i> of different labour groups and castes in marginal places
Representation	marginalization; exclusion from participation in social life. Exclusion of certain groups more than others (women, men; children, elderly); harassment.	Lack of representation (irregular migrants); denied participation in political life	Inability to access institutions due to high transactions costs
Recognition	cultural devaluation disadvantage; language and cultural barriers	lack of rights to formal institutions due to restrictive legislation; more prone to injustices; discrimination and disadvantage of some groups to	Hazards associated with work environment; dirty, dangerous, demeaning work.; Health risks. 'Ghettoisation' of immigrant

		education, social services and economic opportunities	communities (eg, urban informal settlements).
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A distributional form of disadvantage could be ‘locational’. For instance, a major factor causing vulnerability for migrants is spatial dislocation associated with mobility. In transit, migrants may be ‘remote’ in terms of geography and in terms of access to basic services such as health and education. This is especially relevant for undocumented migrants as their status as it precisely these migrants who will be travelling in clandestine form (often across inhospitable terrain) which means they have no recourse to legal protection and health services. A large number of irregular migrants are vulnerable to health problems because of inhospitable terrain on transit and isolation. They are also vulnerable to exploitation and poverty due to their spatial dislocation from economic and social opportunities. This latter point also holds for many migrants at their destination, especially illegal migrants. Spatial dis-location and the remoteness of transit migrations in particular, makes it very difficult for the government to provide formal social protection schemes. It is more often the case that migrants use informal social protection mechanisms to help manage risk during transit. Many migrants rely on informal social protection mechanisms, such as migrant networks, to enable them to better manage the spatial dislocation from source to destination. Spatial vulnerability also interacts with vulnerabilities related to environmental hazards. For instance, the ghettoisation of migrants, particularly illegal ones, who are typically located in marginal areas where distribution of all services is thin (think of the migrant communities in the townships of Jo’Burg).

Socio-political constraints can constitute both relational and distributional forms of disadvantage. They refer to the institutional constraints facing groups (such as children, migrants, women, ethnic groups) and typically reflect the lack of political commitment from the destination government/society to that group. This type of vulnerability is especially pronounced for illegal migrants who by definition are excluded from participation in political life and from access to legal institutions and social and economic benefits. The exclusionary processes resulting from

this determinant of vulnerability often causes the illegal migrant to become further marginalized over time, prone to exploitation and discrimination, leading to a spiral into poverty.

Table 5, above, illustrates how forms of disadvantage compromise structures of opportunities. Access to various physical, financial, human, and political resources; representation in spaces and places that enable people to improve their lives; and recognition – are vital to moving out of dependency and marginalised lives.

The case of transit migrants with irregular status provides a useful way of concretising the conceptual framework presented above. As described in the Box below, these migrants face the full range of forms of disadvantage as well as restrictions on their opportunities. They have no legal recognition, severely restricted access to provisions (nutritional and social), and no opportunities to represent themselves due to a political strategy to keep them separate.

A category of irregular migrant (which often overlaps with transit migrants) that is extremely vulnerable, is the ‘stranded migrant,’ R. Dowd (2008) provides a useful exploration into the plight of these migrants: ‘migrants who leave their own country for reasons unrelated to refugee status, but who become destitute and/or vulnerable to human rights abuses in the course of their journey. With some possible exceptions, they are unable or unwilling to return to their country of origin, are unable to regularize their status in the country where they are to be found, and do not have access to legal migration opportunities that would enable them to move on to another state’ (pp. 2).

Migrants may become stranded due to lack of financial resources to move home; loss of theft of documents; detention; and abandonment. These migrants are particularly vulnerable to human rights violations and abuse. Amnesty International (2006) has commented that ‘[t]hose who lack official status and the protection of the law are often denied the right to education, health and housing services and are condemned to live and work in appalling and degrading conditions.’ Amnesty International states that when the ‘veil of invisibility’ that has kept stranded migrants from the public eye is lifted, ‘we discover a group of particularly vulnerable migrants with a range of protection and assistance needs. Some find themselves caught in both a physical gap

between their country of origin and country of desired destination, and also in a protection gap between the country in which they are situated, their country of origin and the international protection regime' (Dowd, 2008).

#### **Transit migrants with irregular status**

Since 2000 migration control in the Mediterranean has become a growing European priority, leading to groups of migrants becoming 'stuck' in countries bordering the EU due to its strong border controls. Collyer (2006) describes these groups as 'small, highly vulnerable minorities', whose situation is exacerbated where the countries in question (notably those bordering the EU, such as Morocco) have little experience of migration and few provisions to deal with those who become stuck within their borders. Collyer's research identifies these migrants as undocumented, and the primary problems facing them as hunger, illness and racketeering from other migrants. Amongst those with injuries who sought healthcare from Medecins sans Frontieres (MSF 2005), 60% attributed their injuries to the Spanish or Moroccan border guards. Transit migrants in Morocco were found to be mainly Congolese and Nigerians. Collyer's study reports evidence that there are around 10,000 undocumented migrants in Morocco, and that the increased intensity of border controls has led to greater danger in being a transit migrant, and increased difficulty in surviving. The average length of stay of these migrants was found to be high, at 15.4 months.

A study of transit migrants in Libya (Hamood 2006) found that there were four distinct forms of 'holding pattern' for these groups: detention centres designed for short stay, those for long stay, open camp-villages which migrants could exit to work, and repatriation centres which accommodate those being voluntarily repatriated while their papers are processed. Problems with these centres, according to the report, included the fact that women were not held separately from men, and that unaccompanied minors were held together with adults. The European Commission found that the conditions in many of these camps were extremely poor. According to the report, Libya's more formal ghettoisation of these migrants, many of them from Sudan or Egypt and in various stages of the asylum-seeking process, was designed to keep them separate from Libyan citizens and to stop them from seeking the various kinds of formal social protection that might be open to them if they were able to mix freely with the population. The migrants reported that they were subject to constant racism and abuse by native Libyans and that the authorities did not enforce their rights.

As argued above, on average poorer migrants are more likely to engage in irregular migration. And irregular status implies much higher levels of vulnerability. Thus poverty and outcomes are moderated by irregular status. Poorer migrants need to weigh up if increased income compensates for a plethora of possible disadvantages such as: deskilling; extortion; exclusion; insecurity; discrimination; lack of rights; lack of safety at work, etc. Below we draw on qualitative interviews with Ghanaians and Malawians in the UK, Ghanaians returned from Nigeria, and Malawians in South Africa, to highlight the forms of disadvantage that migrants

face along with the comprised opportunities open to them. Nonetheless, these people have chosen to migrate despite the odds.

## **5. Impacts of Status Disadvantage on Human Development Outcomes**

*“Once you have a permit, you are free”.<sup>7</sup>*

In section 3 above we reviewed the reasons why migrants may choose to become or remain irregular. A number of advantages with regard to direct economic (income) benefits are observed. However, the choice to remain irregular implies large opportunity costs in a range of areas. Disadvantages associated with irregularity (as discussed in the conceptual section) impact a whole range of human development outcomes. This section reviews a range of HD indicators with respect to the impact from irregular status. We draw on a wide range of literature, supplementing it with primary evidence from migrants themselves.

### ***Income***

Perhaps the primary way in which the problems of differences in legal status manifest themselves is through the labour market and migrants’ economic opportunities. Workers’ rights generally cannot be enforced for the undocumented, they cannot be accurately counted or assessed, and are correspondingly more vulnerable to employer abuses that lead to reduced earnings and ability to remit.

Many of these effects are likely to be indirect. Migrant workers who are brought by recruiters to work in developed countries may be either legal or undocumented, but their rights are likely to be constrained by a lack of networks and knowledge of the receiving country. This occurs wherever recruited migrant labour exists in significant numbers. For the legal but bonded migrant, dependence on a single employer/recruiter (which may be exacerbated for those present on temporary worker visas which tie them to a single employer) leads to financial abuses such as: fines for not fulfilling quotas; forced withdrawal of wages for payment of ‘debt’ for equipment or travel; excessive interest repayment on debt; and non-payment or extremely low payment of wages. Anderson and Rogaly (2005) term this ‘super-exploitation’. They note that

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<sup>7</sup> (quote from and interview with a Malawian female irregular migrant living in Jo’Burg, SA. 2007)

this problem is far worse for undocumented migrants since they are often smuggled and therefore have to pay off fees when they work.

The right to change employers is important in mitigating wage disparities between legal and undocumented workers. Even legal migrants in many countries do not have the right to change jobs (Anderson *et al.* 2006). This type of restriction is generally focused on low-skilled workers, as in Asia, where Taiwan, Thailand, Malaysia, Singapore, Japan and Korea have all passed laws designed to restrict workers' mobility and access to jobs. This leads to multiple inefficiencies: workers cannot access jobs, are punished where they work without authorisation, and are deported or imprisoned. Some states such as Malaysia allow freelance companies acting as vigilantes to deport the undocumented (Xiang 2008), while others such as Korea impose fines on apprehended irregular migrants before deporting them, and subsequently make them pay the costs of deportation.

In these restrictive labour markets, there are also hidden penalties for remaining undocumented. Domestic workers' lack of legal status, for instance, gives their employers power to withhold earnings and pay below minimum wage, and also means they cannot open a bank account to save their money (Punpuing *et al.* 2005).

For those who do not overstay a visa or transfer from an authorised job to an unauthorised one, becoming an undocumented migrant usually involves some form of smuggling. The cost of unauthorised border-crossing often forms a heavy burden where the migrant would otherwise be generating capital to benefit themselves or those left behind. There is an important difference between the prepaid and postpaid smuggling fee in its impact on migrants and their households. Van Liemt (2004) observes that 'the probability of getting into debt to the trafficker is lower when the trip has been prepaid than when it is being post-paid.'

### **Bribery and Extortion**

Irregular migrants, especially South-South migrants, are frequently required to pay substantial bribes to officials to allow them to remain in the destination. The story recounted by Frans, a Malawian irregular migrant in Jo' Burg, illustrates the institutionalised nature of this type of exploitation of migrants:

*“I used the bus to travel to South Africa from Malawi. I did have a passport and a visitor’s visa for one month. I knew I would never get legal permission to work here. Like everybody else, I simply stayed on after my visa expired. I was arrested 3 times – the first time was in 1993 – for having an expired visa and no work permit. They sent me to Morningside Jail where I remained for 5 days. My brother-in-law bribed one of the guards with R700.00 to let me go. The other two times I was arrested, my brother-in-law did the same thing, although the price went up each time: the last time was in 1994 when he had to pay R850.00 to get me released.*

*It is common for Malawians (and all other foreigners in South Africa) to bribe officials for various things – it all depends on how much money you have. If, like me, you are not rich, you’ll only afford to pay small money to be released if you are caught. If you have enough money, you can pay an official to get you a South African ID (identity) book.*

*I used to visit Malawi during those years using my passport and expired visa. I simply paid the border official R50.00 to allow me to cross. I did that each time I travelled to Malawi. Many others were doing the same thing. Although R50.00 isn’t a lot, when you add all the fifties from all the people crossing with expired documents, those guards made a lot of money each day. We are not happy bribing officials, but if it is the only way of staying on and working, then we will have to do it. We all have to support our families, so we are prepared to do anything to remain here.”*

On coping with illegal status, Abu, a Ghanaian returnee from Nigeria, says that when he is stopped by police, he bribes them and they allow him to go, as long as he has his passport on him. The amount of the bribe is random. The police do not take it directly, but ask him (others have had the same experience) to put the money on the dashboard of the car, or somewhere, so they do not handle the cash directly. Anecdotal evidence suggests that sometimes the police confiscate the passport and sell it to Nigerians, who run businesses in fraudulent duplication of passports. They also sometimes tear up documents in front of migrants.

Mexican Migration Project data (Massey 2005) records the price of being smuggled from Mexico into the US as rising from \$400 in 1993 to \$1,200 by 1999, and today it is \$3,000. In 2003 an illegal crossing by boat from Morocco to Spain cost approximately US\$200 for minors, US\$500 to US\$800 for Moroccans, and between US\$800 and US\$1,200 for sub-Saharan Africans (Lahlou 2003). The SIMI survey respondents, from a mixture of North African and Middle Eastern countries reported that, on average, migration cost their families 2 years of earnings. In the US, irregular workers can recoup their smuggling costs relatively fast. Hanson (2006) estimates that in 2000, a 23-27 year-old recent Mexican migrant with 5 to 8 years of

schooling would make back his smuggling costs of \$2,000 in 313 hours, or 7.8 weeks based on a 40-hour working week.

Meanwhile, Koser's study of 50 labour migrants smuggled from Pakistan and Afghanistan to the UK (2008) looks at comparative prices for being smuggled from the two countries, and their effects on migrants' level of debt and propensity to remit. The group was composed of mainly male migrants travelling without families, half of them university educated. Fees ranged from \$20,000 (to the US and Canada) to \$3,000 (overland to the EU). On average, it took these migrants two years to pay off the smuggling fees with their remittances. However, after that, remittances more than doubled their households' income, leading to the conclusion that even undocumented migrants who pay high fees to be smuggled still contribute to reducing poverty at home.

Migrants also suffer economically from a lack of rights to financial services, since they cannot start bank accounts without documentation about their legal status. Amuedo-Dorantes and Bansak (2006), using data from the Mexican Migration Project, found that legal status was related to whether or not Mexican migrants in the US were banked, and that in turn their access to banks was related to the amount of capital they brought home with them upon return. Being unbanked due to undocumented status has also been shown to hinder Burmese migrants in Thailand from remitting (Koetsawang 2001).

Labour subcontracting is an important factor driving workers' lack of rights with respect to migration, whether documented or undocumented. It distorts the way that legal migrants enter the labour market (concentrating them into specific jobs where abuses develop due to a lack of enforcement); it leads to specific abuses such as low pay, substandard accommodation and working conditions, and a dissociation by the overall employer with workers' wellbeing. As the research of Evans *et al.* (2005) shows, this problem is so great among legal workers that it indicates an even greater problem for those without the basic protection of legal presence in the country. Equally, these abuses can lead legal subcontracted workers to overstay, change employers, or otherwise move out of their original position in the labour market into even more precarious conditions.



As opposed to subcontracted authorised migrants, who will be in sectors such as mining/agriculture/services, but are at least visible because they are on official visa programs, the unauthorised will be recruited for the most extreme/least formal 3D jobs such as informal construction and mining, prostitution, kitchen and marginal agricultural work. These latter occupations are the hardest to make an impact on in terms of decent conditions in the first place. It is thus, easier to exploit workers because they are less visible. Conditions of bonded labour are most likely to go unremarked in these occupations as people pay off recruiters' fees.

### ***Education***

Inadequate access to education particularly impacts undocumented migrants, but can be an issue for legal migrants as well. One fundamental issue for most migrants is learning the language of their receiving country, but this is seldom funded adequately or realistically by governments (MPI 2007). Moreover, new arrivals are often ghettoised, or at least segregated, in ways that reduce their access to education.

The FIDH (2008) studied the conditions of documented and undocumented migrants in South Africa during 2007. It concluded that both groups faced serious problems in accessing education for their children. In the case of documented migrants this was because the authorities tended to claim that they had insufficient documentation to enrol their children. The report found that although this group should have had recourse to legal means of enforcing their right to an education for their children, they were not aware or able to access the information or the help of the relevant authorities. Both problems were even worse for the undocumented, who had no proof of residency at all and therefore could not access education for their families, nor did they have the right to appeal.

Rossi (2008) found that children migrating with their parents to richer countries within the developing world were likely to have better access to education. However, these may not do well in comparison with their native counterparts: evidence from industrialised receiving countries shows that migrant children are among the lowest-scoring in their age groups on standardised tests. Statistics are not yet collected for non-OECD countries, however. According to the same report, the worst challenges are faced by children who migrate between developing countries

with parents who are on temporary worker visas, i.e. those whose only legal status is by association and in any case is tenuous; and by those who migrate alone (and therefore undocumented). These children were unlikely to be able to access education at all, due to 'social and cultural isolation, strenuous and hazardous work, extreme poverty, poor health conditions and language barriers' (ibid.)

Legal migrants (who are not refugees) in the primary migrant-receiving states of the USA do not benefit from any targeted funding to help them learn English, and legally resident migrant children often receive substandard education because of ethnic segregation that groups together newcomers in schools that receive no extra funding for their language-learning (MPI 2007). In the UK, there is some evidence that those who migrate for education may be exploited by receiving-country colleges, which are able to charge higher fees for foreign students. These institutions often recruit intensively without providing adequate information for foreign students, putting them in a situation where they are responsible for their own compliance with the rules but lack the information to preserve their status (Taylor 2009).

The undocumented are highly impacted by inadequate or discriminatory educational provision because they are predominantly young. For example, the undocumented population (predominantly low-income Latinos) in the US historically has an extremely low school completion rate: according to the 2000 Census, only 40 per cent of undocumented Latino males between 18 and 24 who arrived in the United States before the age of 16 had completed high school or obtained a GED (an equivalent qualification).

The World Development Report (World Bank 2007) shows that 50-90 per cent of youth report that they would like to migrate, mainly temporarily. A third of the migrant flow from developing countries are aged 12 to 24. Young undocumented migrants suffer problems when they reach the end of the period in which schooling is legally mandated and therefore free. For example, in the US in 2006 there were an estimated 1,075,000 unauthorised youth aged between 5 and 24 (Batalova and Fix 2006) for whom legal status presented a serious challenge to their ability to access education. Although federal law mandates that these migrants receive free schooling up to the age of 18, the undocumented cannot receive funding to attend colleges (particularly public

institutions) in the United States. 360,000 of these youth were already in this position since they were over the age of 18.

### **Deskilling and Lack of Dignity**

A common refrain among irregular Ghanaian migrant workers in the UK was how a lack of choice forced them to accept any work offered, regardless of the type of work or whether or not they felt it corresponded with their education and skills. De-skilling describes the process whereby migrant workers accept work that does not match their education or skills. Of the Ghanaian migrant workers interviewed, 84.5 per cent had at least tertiary level qualification, and roughly half had acquired additional qualifications in the UK. Yet, of the migrant workers interviewed, 42 per cent held low-paid jobs characterised by low pay and few work-based entitlements. Many of the respondents described their work as not matching their education. Ben, who holds an undergraduate degree and is pursuing an MBA, said the following of his work experience:

*I took whatever job was available. I am not fussy. At all of these jobs I worked with people who mostly didn't even have a degree. It was not very taxing on my brain. I want something I can really enjoy.*

Ken similarly remarked: “*you can't finish university and produce sandwiches.*” Faced with informal practices that position them in low-paid, insecure work, many migrant workers accept their situation to realize their desire to be continuously employed.

The centrality of employment for many Ghanaian migrant workers is further reflected in how it was presented as a key component of living a dignified life. More specifically, dignity was often described as having a job commensurate with the level of education the migrant worker had obtained. For Ed, this was associated with “*an office job that uses my brain, not my energy.*” Yet, for many respondents, the power of the social norms exercised by employers and employment agencies made this an elusive dream.

For the Ghanaian migrant workers interviewed, continuous employment was repeatedly identified as a key social protection strategy within a web of rules that had successfully closed-off access to state-, market- and employment-based social protection. The effectiveness of the strategy may be undermined, however, by the fact that many of their work histories were littered with low-paid employment and the high prevalence of de-skilling.

*~excerpt from Coll-Black (2007)*

### **Health**

Like education, healthcare is problematic in different ways for legal and undocumented migrants, with problems of cost and access clearly worse for the unauthorised. Temporary migrants rarely have access to the full range of health services in the receiving country (Anderson *et al.* 2006), nor can they get insurance from countries of origin. Migrants who are longer term residents for the purposes of employment, however, have a right to such treatment (*ibid.*). Yet often treatment in industrialised countries is too expensive for new arrivals, or those who are sending money

home. Thus although higher healthcare costs can present barriers to access for natives as much as migrants, those barriers are higher for the poorer and less secure.

A report from PICUM (2007) evaluating the situation of migrants with regard to healthcare in the EU found that there were many barriers specific to the undocumented. While language barriers and racism from the authorities and social workers in particular were problems affecting migrants regardless of legal status, the report identified five main problems specific to those without legal status. First, they cannot provide documentation to prove that they are able to pay hospital bills, leading to denial of care in many cases. There is also a lack of information on entitlements for undocumented migrants in the healthcare system, so that they do not know whether they can access care or not. When they do access it, medical care often costs more than they can pay, and without translators and cultural mediators it can be difficult for them to choose between treatment options and control the care they receive. Finally, in countries such as Germany, Sweden and France, there is a 'responsibility to report', where the healthcare provider must legally inform the authorities if they know they are treating an undocumented migrant. These conditions lead to a lack of trust between providers and patients, and often mean that patients do not seek care in the first place.

A study by Medecins du Monde (2007) looks at access to healthcare for documented and undocumented migrants. It identifies the main issues for migrants in general as precarious housing conditions, poverty, and lack of awareness of rights (particularly to health coverage). The latter is something that particularly affects those most in need of regular or preventative healthcare (the HIV positive, women of reproductive age, and children). The report notes that these issues are much greater among the undocumented, mainly because of poverty, and concludes that 'in most cases undocumented migrants do not have effective access to prevention and treatment unless it is free'.

These problems can be greater for women, whose healthcare needs are different from and, in the case of reproductive health, less negotiable than men's. A study comparing undocumented women migrants to legal residents in Switzerland (Wolff *et al.* 2008) demonstrates that the undocumented have more unintended pregnancies and delayed prenatal care and use fewer

preventive measures. Similarly, a study of undocumented mothers in Colorado (Reed *et al.* 2005) found that they had higher rates of the pregnancy-related risk factors that were amenable to preventative care, but were not receiving the prenatal care that would address these risks.

## Access

### Differential Access to Welfare Services at Destination

Access to social welfare is highly dependent upon the welfare state and supporting legislation and structures within each country. For instance, many migrants were able to access state health and education services in the UK, but migrants in South Africa were largely excluded from these services. In both cases, however, access to transnational social networks arguably served as migrants' main 'safety net' against the risks posed by international migration. This difference is in large part due to the fundamentally different welfare systems of the receiving country. In the UK, free public health and schooling based on universalistic principles has led to limited policing of 'foreigner' abuse of the system. To be enrolled in school all that is required is evidence of permanent residence (and address). The immigration department does not regularly share information with the education and health departments. On the other hand, in South Africa much health and education are largely within the private sphere. Furthermore, ID cards are required for registration for all social services. Where ID numbers are less than 13 digits long (indicating non-citizen status), rights and entitlements are severely restricted. Irregular migrants have extremely limited opportunities to access services.

Of the UK health and education systems, a Malawian migrant claims:

*"It is not difficult for the children of illegal migrants to get into a school or even for illegal migrants to get seen by an NHS doctor because schools and surgeries don't ask questions about the status of people who come to them. There is no communication between the Home Office and Education and Health. So, even if you are an illegal, the school or surgery won't ask for any documentation. You are free to register."*

The past lax immigration laws have also allowed otherwise non-residents access to the education system.

*"Others have made arrangements like my wife's. She brought her sister's children to the UK as her own. No questions were asked at the airport: she simply claimed that they were her own children. Now they are both in school, living with their mother. It is common among migrants to do this for each other."*

The South African situation is very different:

*"I came to South Africa because my husband was here and I was pregnant with our second child. We didn't know that you needed a South African ID number to go to hospital. Luckily, when the time came to have the child, I used the ID of a Malawian woman who has managed to get an ID. We look nearly the same, so I was able to deliver the baby in hospital."*

Current knowledge indicates that there are many under-researched effects of undocumented status on mental health. A study of Chinese patients in New York (Law *et al.* 2003) found that they were more likely to be hospitalised, and also more likely to have this occur more than once. They were also less likely to engage in and comply with treatment. This study implies that there are cultural problems in access to healthcare for the undocumented, exacerbated by the effects of their status on social integration (e.g. language skills that allow them to communicate with doctors, and understanding of and potential to recuperate from illness.)

Another dimension of health relating to migration is insecure working environments. A report by the UK's Health and Safety Executive (McKay *et al.* 2006) found that immigrant workers in general were frequently subjected to unacceptably dangerous conditions at work. They attributed this to a range of factors: the study confirmed that undocumented workers tend to be young, male and less risk-averse than legally resident workers; they tend to congregate in the dirty, difficult and dangerous jobs that workers; and they are often subject to coercive recruiting and subcontracting procedures that enable employers to expose them to extreme workplace conditions. In the UK, the report found that Chinese workers were most likely to fall into this category of undocumented workers in dangerous jobs. The undocumented surveyed were much more likely than legal workers to rate their jobs as dangerous, their employers as unconcerned with safety at work, and to say that they had no ability to seek enforcement of their rights. They were also less likely to have been trained for the jobs they were doing, and more likely to have observed accidents at work.

Migrants' physical integrity is often at risk, for the undocumented in particular. One dimension of this is hazardous border crossings. Cornelius' 2006 study of the effects of the US government's attempts to close its border to Mexican undocumented migrants demonstrates that the measures taken 'have forced migrants to attempt entry in extremely hazardous mountain and desert areas, rather than the relatively safe urban corridors traditionally used', and that this has caused a ten-fold increase in migrant deaths since 1995. Since that year, more than 4,045 migrants have died from causes including dehydration, hypothermia and drowning.

Anderson and Rogaly (2005) outline a number of ways that violence is perpetrated specifically against migrants, including threats regarding their immigration status, withdrawal of means of survival, and threats against the physical integrity of self or family.

### ***Physical violence***

Immigrants are often subject to violence and threats of violence by the native population. These often accompany an upswing in undocumented migration, as has been formalised by the vigilante ‘Minutemen’ movement in the US (Reuters 2005), but over the last decade rising levels of migration worldwide have been met with numerous acts of extreme violence that are unprecedented in recent decades. In May 2008 South Africa demonstrated the potential for violence against migrants by the domestic population when the influx of foreigners looking for work, driven by economic and political conditions in neighbouring countries, led to xenophobic attacks (Guardian 2008). Similar attacks have occurred against Moroccans in Spain (BBC 2000), and against immigrant hostels all over Europe (YaleGlobal 2006).

Legal status clearly plays a role in violence against women. Raj and Silverman (2002), in their study of violence against immigrant women in the US, cite undocumented status as one of the most important factors exacerbating the risk of this type of violence, since the threat of deportation prevents victims from seeking help. They note that legal permanent residents are also at high risk because their status is not necessarily safe if their partner is the one being violent, but that on balance they have more chance of seeking safety than the undocumented. Undocumented women, this study shows, are often doubly threatened with deportation, by their partners and the government. The study also shows that among immigrant women, those who are undocumented are less likely to seek social and health services due to isolation and fear of deportation, and that they tend to be unaware of available services, which they may not be linguistically or culturally competent to use if accessed.

### ***Social protection***

Existing social protection measures for workers are often a problem for migrants in developed countries. A Canadian report (Elgersma 2007) notes that migrant workers who are legal derive no benefit from basic employment insurance and often work in non-unionized sectors, reducing

their recourse in cases of employment or other economic shocks and generating systemic instability in certain sectors.

Even in a nation as wealthy as the US, the comparative financial disadvantage of being undocumented, and the concurrent lack of access to basic social protection programs that cover poor families, leads to concerns surrounding health and nutrition for this group in particular. A 2008 study (Hadley *et al.*) indicates that among undocumented migrants living in the US, uncertain and unpredictable work schedules and limited access to public assistance seem to contribute to high levels of food insecurity and hunger, which in turn may also negatively affect mental and physical health. The study also finds that the longer an undocumented migrant lives in the US, the poorer their health indicators.

The richer receiving countries have tightened the provisions of their social protection systems so that migrants cannot gain access. One example is the Netherlands, where for non-permanent residents there is a conflict where access is based on residency, but keeping residency is predicated on not claiming any kind of benefit. The country's 'linkage act' has made it possible for the government to exclude migrants from services such as healthcare, which since the 1970s was available to refugees and later asylum-seekers, but has now been restricted. As with all social protection restrictions, barriers such as these form an even greater problem for the poorer undocumented migrants, 129,000 of whom in the Netherlands have no social benefits (Siegel 2008).

Remittances function as a form of social protection for migrants' families and communities. Punishing workers financially for unauthorised status reduces their ability to earn and remit, and leads to greater need and therefore increased undocumented migration. Remittances have important effects on basic health and survival among those left behind: a survey from Pakistan (Mansuri 2006) shows that having a migrant family member leads to increased nutrition and better health outcomes, for girls in particular, in poor families. The study, which deals with households whose members migrate to the Gulf States, notes the 'positive and extremely significant' impact on height-for-age in girls, a change which is also sustained over time.



### ***Civic participation***

The chief ways in which documented migrants experience vulnerabilities in this area have to do with integration and acculturation and the provisions for these by the receiving country. Voting rights are important on the local level, so that migrants can have input into issues that affect them immediately, such as schools and local budgeting. 25 migrant-receiving countries and an EU-wide treaty have established these rights over the last half-century. However, aside from EU citizens in other EU countries, migrant suffrage beyond the most local level is highly unusual (Earnest 2003), and no countries currently award suffrage to the undocumented.

Social exclusion takes various forms beyond a lack of representation. It ranges from ignoring the specific needs of immigrant groups to exclusion from social or cultural activities and from the economic opportunity that allows people to integrate and claim their rights in receiving countries. A report from the Canadian government (Elgersma 2007) addresses the more insidious nature of problems with exclusion: even legal workers may be dissuaded from fighting unjust treatment because their temporary status influences their perceptions of their rights and entitlements. The threat of repatriation is ever-present, and is even greater for undocumented workers. In terms of proactive actions by government or others, systemic actions are needed to address language barriers, isolation, racism, harassment, and to encourage social linkages between native-born and immigrant groups.

### ***Dignity***

*“Eish, life here is hard. We are exploited; we are chased away; the police harass us; the [black] South Africans call us “kwerekwere”; the criminals attack us, and it is dangerous to go out at night. This is not home. Home is friendly, home is safe, home is best. You can have money here, but you are not happy; you don’t enjoy it the same way as at home. Here you are not safe.”(Malawian migrant in Jo’Burg)*

Although dignity is inevitably a factor in each of the categories of human development, it can be isolated as something especially challenged by the inequalities that migration, and undocumented migration in particular, tends to generate in areas both of destination and origin. There are

several receiving-country dimensions, beginning with those tied to work and employer abuses. Migrant vulnerabilities in this area also revolve around having *access* to the same rights and services as others in the receiving country, as much as around basic rights such as adequate nutrition. This is also an issue, however, in many sending countries, where large scale migration can lead to the development of imbalances in service provision that lead to and reinforce both visible and felt inequalities between migrants and non-migrants and their families.

#### **Dignity, fear isolation**

Irregular status often breeds insecurity, fear and isolation for the migrant. Redson's sister-in-law came from Malawi to the UK as a student. When her course finished, she decided to stay on. But her visa had already expired by this time. She is now having a case with the Home Office – i.e. explaining the reason for allowing it to expire and asking for permission to remain on the grounds of being a student. Since her case is still with the Home Office, and they have her passport, she is not entitled to work. But she does and earns about £60 per week, which Redsons's wife supplements by sending her £50 per week.

She lives in constant terror of being caught. When she is on the street and she sees a police car or officer, she just gets onto the first passing bus irrespective of where it is going! She does not answer her door; neither does she give her phone number to her sister. They wait for her to call them. But she nonetheless still prefers to remain in the UK, even under these circumstances because what she earns in the UK is more than what she would at home. She has no prospects in Malawi at all. Most irregular Malawians are in this position: their situation here is terrible, but it is better than back in Malawi.

#### ***Excessive dependence on employers/third parties***

Rogaly and Anderson identify several problems caused by migrants' dependence on those who sponsor them into the receiving country. These include passport or ID card retention which, for example, the UK NGO Kalayaan estimates occurs with 50 per cent of domestic workers (IRR 2003). Anderson and Rogaly (2005) also posit that these problems include incarceration; enforced social isolation; prevention from organising; high personal dependence on employers/agents; promotion of ignorance of rights; and the provision of grossly sub-standard living conditions to legal and undocumented migrants. All these problems are exacerbated by undocumented status.

### ***Inequity relating to gender***

Gendered inequalities are often exacerbated by migration, and particularly by the lack of access to rights and protection when women migrate undocumented. Although migration as a rule can empower women by exposing them to cultures where they are awarded more or different rights, undocumented status can result in the opposite, where women end up in oppressive labour or family conditions without rights. A Caritas report from 2006 quotes a study from the Netherlands in 2001 showing that undocumented women are at greater risk of homelessness as their status (or lack of it) is often tied to that of their partners, and thus they can be more vulnerable, both to ill treatment and violence, and to destitution if they escape to a shelter.

Undocumented women's lack of access to social protection is demonstrated by the difference in their labour market behaviour when they are legalised. This was illustrated in a study by Amuedo-Dorantes *et al.* (2006), who used a quasi-experimental framework to assess the differential effects of legalisation on men and women's labour market outcomes and wages. Using data from the 1987 and 1992 waves of the LPS and NLSY79 surveys, they found that legalisation led to increased wages and job mobility for men, and similarly increased wages but reduced labour market attachment for women, who were 7.7 per cent more likely to exit the workforce once they became eligible for social benefits.

In table 6 below we illustrate the outcomes of different forms of discrimination and exclusion against irregular migrants across different indicators. We draw examples from three countries only using some of the information provided in this section.. This could be extended to many more countries.

Table 6: Comparative discrimination against authorised, temporary and unauthorised migrants

		<i>Income</i>	<i>Healthcare</i>	<i>Education</i>	<i>Costs of migrating</i>	<i>Labour market issues</i>
<b>THAILAND</b>	Auth.	Registration/ legalisation process acts as a tax	Information and outreach insufficient in migrant areas.	Children of migrants are generally born stateless, lack registration, cannot access education	High: work permit costs a month's wages for average migrant	- Registration process makes it difficult to change employers - worker exploitation in migrant sectors
	Temp.	Registration/ legalisation process acts as a tax	Temp. worker registration includes healthcare payment – very limited services available.	Children of migrants are generally born stateless, lack registration, cannot access education	Payments to recruiters often result in debt bondage for migrant workers in low-skilled urban sectors	Temporary workers confined to a single employer; no enforcement of worker rights.
	Unauth.	- Higher (less extortion) ; - but less opportunity to remit safely	Cost decreases access	Work generally takes precedence over education for migrant children	70% of undocumented are Burmese, thus relative ease of transit.	- Avoiding registration process allows workers to change jobs, move around country. - No enforcement of worker rights
<b>SOUTH AFRICA</b>	Auth.	- Foreign workers are paid less than minimum	- Extra fees levied on foreigners; - providers often deny	- documentation reqs. used to bar foreign	Work migrants are generally from neighbouring	- lack of rights enforcement - workplace violence

		<p>wage in skilled and unskilled jobs.</p> <ul style="list-style-type: none"> <li>- Foreigners cannot open bank accounts, cannot receive state-funded worker benefits</li> <li>- legality found to heighten positive wage effect</li> </ul>	<p>care to migrants</p> <ul style="list-style-type: none"> <li>- ID needed</li> </ul>	<p>children;</p> <ul style="list-style-type: none"> <li>- fees and permits</li> </ul>	<p>g countries – relative ease of access.</p>	<p>common</p>
	Temp.	<p>Debt bondage /contractual financial exploitation are frequent among temp. farm workers</p>	<ul style="list-style-type: none"> <li>- Extra fees levied on foreigners;</li> <li>- providers often deny care to migrants</li> <li>- ID needed</li> </ul>	<ul style="list-style-type: none"> <li>- documentation reqs used to bar foreigner children;</li> <li>- fees and permits</li> </ul>	<p>Work migrants are generally from neighbouring countries – relative ease of access.</p>	<ul style="list-style-type: none"> <li>- generally subcontracted, with poor working conditions;</li> <li>- status is tied to one employer</li> </ul>
	Unauth.	<ul style="list-style-type: none"> <li>- economic outcomes depend on length of stay and access to social protection, more than status.</li> </ul>	<p>No access to healthcare, including for children</p> <p>Access depends on patron-client employer relations</p>	<ul style="list-style-type: none"> <li>- No access;</li> <li>- No recourse to courts/enforcement of right to education</li> </ul>	<ul style="list-style-type: none"> <li>- bribes often paid to border guards;</li> <li>- bribes to evade jail due to irregular status are high.</li> </ul>	<ul style="list-style-type: none"> <li>- labour laws apply to undocumented, but are not enforced.</li> <li>- deported workers have no right to claim wages</li> </ul>
<b>USA</b>	Auth.	<p>Gaining citizenship positively</p>	<p>No access to programs for low-</p>	<ul style="list-style-type: none"> <li>- lack of specialist English</li> </ul>	<p>Permanent visa costs are high.</p>	<p>Worker benefits (pensions,</p>

		impacts wages.	income people	language teaching in new destination areas		insurance, compensation etc) are generally dependent on citizenship status rather than legal worker status.
	Temp.	No significant difference in wages between temporary/unauthorised workers in similar sectors.	<ul style="list-style-type: none"> <li>- Restricted access to healthcare</li> <li>- no access to low-income programs</li> </ul>	<ul style="list-style-type: none"> <li>- temporary migrants are most likely to be in new areas with few language provisions for children</li> </ul>	Entry via subcontractors/recruiters often leads to lower paying jobs.	Labour abuses (pay, accommodation, conditions) often force subcontracted workers into worse jobs and undocumented status.
	Unauth.	No enforcement of minimum wage standards	<ul style="list-style-type: none"> <li>- Care is generally unaffordable;</li> <li>- unaware of rights</li> </ul>	<ul style="list-style-type: none"> <li>- Right to primary and secondary education for all children</li> <li>- no access to college loans</li> </ul>	Smuggling costs are high due to border enforcement, but irregular workers make back their costs in a few months.	3-year crackdown on undocumented labour – prosecutions, deportations

## 6. Conclusions

The underpinning hypothesis of this paper has been that, as long as poverty drives migration, legal status will not be a priority for migrants. In other words, formal barriers to migration will not significantly stem irregular migration flows. Migrants will be willing to endure short to medium term hardship and an undermining of a range of capabilities and rights (such as education, social assets, rights and personal welfare) to provide economic safety nets for their families and future improvements in their (and their families') livelihoods and wellbeing. We

have shown that on average migrants achieve positive increases in income and assets through the migration experience, thus they are willing to settle for sub-optimal solutions in which they willingly (and strategically) sacrifice a whole range of freedoms and rights.

It is precisely because poorer migrants are unable to attain first best solutions, whereby they can achieve positive development outcomes across a range of indicators – economic, social and political – that governments and policy makers must act as protectors of rights and freedoms and as facilitators of positive migration outcomes. Creative solutions are needed in order to maximise the benefits and minimise the risks of migration for irregular migrants. Host governments are faced with a dilemma, given that tighter border controls have not stopped migratory flows, but rather created more diverse migrant strategies. Formalising the status of irregular migrants would likely improve these migrants' rights and security — and increase migrant remittances, making migration more beneficial to migrant sending countries. However, such policies must contend with the negative attitudes towards irregular migration that are present in many political and popular narratives. It is highly unlikely, given the political sensitivities of regularisation and rights for irregular migrants, plus the global financial downturn with its associated labour market tightening, that developed countries will like take a liberal stance on irregular migrants in the foreseeable future.

Given this, if developing country governments accept the positive relationship between migration and development, then they must also take very seriously the plight of millions of their native workers abroad (as regular and irregular migrants). It is in developing countries' interests to protect their citizens abroad and facilitate the repatriation of their efforts (through better remittances channels as well as incentives for return and social protection). Pursuing this type of support may create political tension between developed and developing country policies, however political pressure from the Global South is an obvious option. The Global South should resist Northern pressures to control borders, but rather recognise the massive contribution that much of the migrant population makes to the country, regardless of status.

Legal status is necessary to ensure protection of a range of rights and entitlements for migrants, however alone it is not enough. We need to dispel myths about migrants (irregular ones in

particular), increase efforts at community integration, get serious about decent work agendas, and commit to the protection of all migrants regardless of status worldwide.

### ***What options do we have?***

#### **1. Ensure basic human and social rights to all migrants, independent of their status**

Given the large number of undocumented migrants and their weak legal and social position, it appears that the most effective way to enhance the social protection of migrants in SADC—and maybe most low-income countries—is to ensure basic human and social rights for them. Due to their undocumented status, many migrants easily fall victim to exploitation, in particular vulnerable groups like women. Other problems migrants may face are freedom of association, isolation, exclusion and xenophobia. These problems erode the benefits of migration for all parties and seriously undermine its development impact, including productive employment and decent work. Governments need to get serious about upholding human rights laws, such that migrants are entitled to basic services, freedom from exploitation and a right to a fair trial. Taking seriously, also, a Decent Work agenda must translate into more labour market monitoring and ensuring workplace safety. Granting basic human and social rights is also in the interest of native workers because without such provisions employers have an incentive to favour more vulnerable and thus cheaper labour over native workers. In other words, discrimination against migrants in terms of social rights also makes migrants cheaper for employers—at the expense of native workers.

Where necessary, countries of origin and destination need to put policies, legislation and mechanisms in place that provide migrant workers with protection and support from any abuses in the labour migration process. Perhaps the best way to move forward on a basic human and social protection rights agenda is to establish a country-specific minimum ‘social floor’ which all people have a right to, regardless of residency status or legal status. Such a floor would necessarily include access for migrants to emergency health care and access to education for children.

#### **2. Support migrant networks and associations**



As this research project has shown, access to informal social protection is critical for achieving positive outcomes from migration, particularly for poorer migrants in a South-South migration context. Encouraging and facilitating social networks and informal social protection will help migrants reap the benefits from migration. For example, governments could actively support and provide funding for migrant associations as well as migrant rights NGOs as a way of supporting current migrants—or at the minimum should not undermine informal migrant networks and instead provide them with an environment where they can duly develop. Informal networks could also be used as a channel to improve safety during the migration process. They could be used to inform migrants about benefits, costs, and risks of migration during and ideally prior to migration. Governments in both sending and destination countries may also attempt to connect with migrant networks to learn details about exploitation incidents—for example at the workplace—and feed this information into their monitoring process of labour market conditions. Finally, one particular concern about informal networks is that their usability for migrants could depend on the migrants' duration of stay. If migrants' welfare in a South-South migration context crucially depends on informal networks, then a sufficient length of stay is important so that migrants have to time to build strong ties among themselves.

Clearly it is politically impossible for governments to openly encourage and support the activities of undocumented migrants. However, by supporting registered and recognized migrant groups, localities and diaspora networks, policies will have the indirect effect of strengthening avenues by which undocumented migrants can report instances of abuse and exploitation as well as claim basic rights, and at least facilitate spaces where migrants can access networks.

### **3. Develop effective and safe avenues for remitting for all migrants**

Many migrants are primarily concerned with the welfare of their families back home and remittances are the means by which families are supported, homes are built, basic needs are purchased, children are schooled and investments are made. Migrants, especially the undocumented ones, are often excluded (actively or self-excluded) from financial systems (be it a bank, a post office account or a financial intermediary), which is of crucial importance for all migrants who want to safely transfer remittances to their families. Governments and donors must think creatively about secure and efficient ways of encouraging and facilitating access to

remitting services for all migrants. This would be an obvious advantage for the migrant and for the destination economy. It may likely have a longer-term spin off effect whereby migrants begin to save and access credit lines. Ensuring migrants' access to better and safer financial services in order to support remittance flows is a particular priority for source country governments, given the massive potential that remittances have for development.

#### **4. Create regional and sub-national migrant integration initiatives**

Integration initiatives have been shown to have potential for addressing a range of vulnerabilities relating to migration. One successful example can be seen in the US, starting with Illinois, where a coalition of migrant NGOs partnered with the state executive to create a set of programs and provisions designed to give migrants better access to social protection, representation and education, with the end goal of optimising both their social and economic outcomes and the state's ability to benefit from its migrant population. The New Americans Initiative of 2005 involved programs ranging from instituting bilingual public services to providing skills training and English language programs for migrants. The initiative also contained a citizenship and voter registration component, with the goal of preserving and expanding migrants' rights and protection. The program was conceived as a progressive intervention, in that it awarded the same rights and access to the undocumented as to all other migrants (except noncitizen voting rights), thus creating the most impact among the most vulnerable.

The program had a strong PR effect, framing immigrants as an economic opportunity for Illinois. It also effectively created Chicago as a safe zone for the undocumented, using an economic rationale based on the importance of migrant labour for the manufacturing and service sectors.

The initiative is currently being replicated by Massachusetts<sup>8</sup>, where the governor's office has called on state officials, policy advisers, and advocates to hold a series of public meetings across the state and draft a report with policy recommendations by July 1, 2009. with elements of the idea being replicated at municipal level in California, New York and Maryland. This sub-national characteristic is arguably the most important factor in creating such a successful integration initiative. It avoids a 'one size fits all' approach since programs can be tailored to answer the needs of local migrant populations, and minimises political opposition, since the

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<sup>8</sup> <http://icirr.org/en/node/2962>

economic rationale that has proved successful in winning native-born voters' consent can also be framed to fit local needs and opportunities.

Other initiatives (described in detail in Van Hear (2008)) currently being implemented in Latin America draw on UNHCR and UNDP jointly implemented initiatives from the late 1980s. These Quick Implementation Projects (QIPs), aimed at rapidly improving the living standards of the population, for instance by building schools, bridges, hospitals, etc. Drawing upon this experience and in the framework of the Mexico Plan of Action<sup>9</sup>, UNHCR allocated more than US\$3 million to projects similar to the QIPs, benefiting 350 communities and 18,000 people between 2005 and 2007 (UNHCR 2007c). Initiatives that benefit not only refugees and other migrants but also the local population are very important to reach those who have not been granted official status and also to avoid competition, discrimination and xenophobia. Similarly, micro-credit programmes have been developed in the region: UNHCR-funded micro-credit schemes in Latin America have supported more than 800 projects and benefited some 2,000 people between 2005 and 2007 (UNHCR 2007c). Those programmes also target a broad audience of refugees, migrants and the local population, avoiding tensions and stimulating the local economy in general.

**5. Allow for temporary work opportunities through a migration policy framework.** Given that much migration (particularly South-South) is, first, not a unidirectional, permanent phenomenon, and second, to a large extent informal and temporary, demand-driven migration programs might offer the best policy framework for migration. Many poorer migrants do not want to stay in the host country for very long but rather migrate to earn money for certain purposes and leave after having earned enough money. Thus, a temporary migration scheme that would grant work permits to migrants to work in seasonal jobs and specific sectors for a limited time would be one way to go forward. Additionally, a migration framework should consider the significant number of cross-border traders that regularly cross the border for trade purposes. These circular migrants, who significantly contribute to the destination economies, should be equipped with trade visas to enter the country legally. These measures would lift many migrants

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<sup>9</sup> The Mexico Plan of Action was adopted by eighteen Latin American governments in 2004, establishing the activities and priorities to deal with current challenges in the protection of refugees in the region, notably the Colombian situation.

into the status of legal migrants, which may make it easier for them to improve their livelihoods (at destination, in transit and at source) and to eventually improve their access to formal social protection.

In addition, any policies attempting to select and control the composition of migration flows are likely to fail. As the research has shown, both legal and undocumented migrants are likely to benefit from migration, so as long as there is adequate demand for migrants in domestic labour markets, undocumented migrants are likely to move. If policy makers seek to formalize migration, this reality has to be acknowledged. Therefore, any migration framework should include demand driven components that provide strong links between demand in domestic labour markets and supply of migrant labour. Control and management of migration via instruments such as point-based systems are unlikely to work in contexts such as South Africa where demand from the informal and unskilled labour market is met with a supply of undocumented migrants. A proper regional migration framework that opens legal opportunities for temporary migration—including low-skilled migration—is most likely to have the greatest impact.<sup>10</sup>

#### **6.Consider wide-spread regularisation (depending on labour market conditions)**

In the EU, regularisation has been both an official and an unofficial tactic to address the presence of unauthorised migrants. ICMPD (2008) found widespread examples of both formal and informal regularisations throughout the EU, with the formal outnumbering the informal. Since 1973 there have been 69 regularisation programmes, 87% of them targeted at undocumented workers. However beyond formal programmes, administrative regularisation mechanisms emerged during the increase in asylum-seekers in the 1990s. Consisting either of giving migrants formal documentation or suspending removal orders, these mechanisms largely confer a humanitarian right to remain. All but 5 of the EU member states have some form of administrative regularisation mechanism. The ten wealthiest EU states, over the period 2005-6, regularised 92,874 migrants through these mechanisms. They cover a range of cases, but most relate to non-refoulement, health and family ties, statelessness and other exceptional

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<sup>10</sup> A promising example of a regional migration framework is the recently launched Abu Dhabi Dialogue that aims at paving the way for the better management of temporary contractual labour mobility between the United Arab Emirates and its main sending countries in South Asia. See speech by Luca Dall'Oglio, Permanent Observer to the United Nations, at the 46<sup>th</sup> session of the commission for Social Development: <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1336?entryId=16565> (accessed on 15<sup>th</sup> June, 2008).

circumstances. Portugal has a mechanism whereby those who have been ‘otherwise legally employed and resident’ may stay, and France similarly awards legal status to migrants working in certain key professions (ICPMD 2008).

In fact, one incentive in favour of unauthorised entry to countries with labour rights that are fairly well enforced, such as the US or Spain is undoubtedly the possibility of regularisation through amnesty, which has effects on all dimensions of migrants’ wellbeing. The issue of whether it impacts them significantly in financial terms is still under debate – for example, a study by Kaushal (2006) found that when Nicaraguans and other Central Americans were offered an amnesty in 1997, the effect differed according to human capital. The wages of undocumented workers who had completed high school were increased by 5%, while the amnesty had no statistically significant effect on those with lower levels of education. However, access to social protection, services and participation is inevitably raised by regularisation. Both Spain and the US have had widely publicised regularisation programs in recent decades, which creates some expectation on the part of migrants that they will not have to remain undocumented forever.

Fakiolas (2003) points out that both employers and employees benefit from undeclared employment and that is why results and revenue from regularisations are below expectations. Legalisations have both positive and negative economic effects on immigrants and on the economy. Whether regularisation will have a positive or negative effect on migrant outcomes will depend largely on the state of the destination labour market. For instance, in a richer Asian or Gulf country (see e.g. of Burmese in Thailand), regularising means a loss of flexibility. It may imply having to buy a work permit, and possibly the bonding of labour to one employer or sector, leading to exploitation. However, in the EU or US, worker protections and social protection come with regularisation and migrants can therefore use their income more productively. But in those labour markets too, low-skilled labour remains low-skilled, and people who regularise will not be able to move out of low-wage occupations. It may not be possible, then, to see a positive outcome on wages. However, one can safely say that regularised workers will be less vulnerable to micro shocks such as health crises, and things therefore get less volatile than for irregular workers.

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